

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 31st day of March, two thousand sixteen.

PRESENT:

RALPH K. WINTER,
GUIDO CALABRESI,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

YI SUN,

Petitioner,

v.

LORETTA E. LYNCH, UNITED STATES
ATTORNEY GENERAL,
Respondent.

14-4483
NAC

FOR PETITIONER:

Vlad Kuzmin, Kuzmin & Associates
P.C., New York, New York.

FOR RESPONDENT:

Benjamin C. Mizer, Principal
Assistant Attorney General; Nancy
Friedman, Senior Litigation
Counsel; Margaret A. O'Donnell,
Trial Attorney, Office of
Immigration Litigation, United
States Department of Justice,
Washington, D.C.

1 UPON DUE CONSIDERATION of this petition for review of a
2 Board of Immigration Appeals ("BIA") decision, it is hereby
3 ORDERED, ADJUDGED, AND DECREED that the petition for review is
4 DENIED.

5 Petitioner Yi Sun, a native and citizen of the People's
6 Republic of China, seeks review of a November 4, 2014, decision
7 of the BIA affirming a December 11, 2012, decision of an
8 Immigration Judge ("IJ") denying Sun's application for asylum,
9 withholding of removal, and relief under the Convention Against
10 Torture ("CAT"). *In re Yi Sun*, No. A201 117 985 (B.I.A. Nov.
11 4, 2014), *aff'g* No. A201 117 985 (Immig. Ct. N.Y. City Dec. 11,
12 2012). We assume the parties' familiarity with the underlying
13 facts and procedural history in this case.

14 Under the circumstances of this case, we have reviewed the
15 IJ's decision, including the portions not explicitly discussed
16 by the BIA. *Yun-Zui Guan v. Gonzales*, 432 F.3d 391, 394 (2d
17 Cir. 2005). The applicable standards of review are well
18 established. 8 U.S.C. § 1252(b)(4)(B); *Yanqin Weng v. Holder*,
19 562 F.3d 510, 513 (2d Cir. 2009).

20 For asylum applications, like Sun's, governed by the REAL
21 ID Act, the agency may, "[c]onsidering the totality of the
22 circumstances," base a credibility finding on inconsistencies
23 between the applicant's statements and other evidence, "without

1 regard to whether" they go "to the heart of the applicant's
2 claim." 8 U.S.C. § 1158(b)(1)(B)(iii); *Xiu Xia Lin v. Mukasey*,
3 534 F.3d 162, 163-64 (2d Cir. 2008). "We defer . . . to an IJ's
4 credibility determination unless, from the totality of the
5 circumstances, it is plain that no reasonable fact-finder could
6 make such an adverse credibility ruling." *Xiu Xia Lin*, 534 F.3d
7 at 167.

8 Substantial evidence supports the IJ's adverse credibility
9 determination, which was based on inconsistencies within Sun's
10 testimony and between his testimony and his documentary
11 evidence, as well as a lack of corroborating evidence. The
12 first inconsistency identified by the IJ regarded the date of
13 Sun's baptism: Sun testified that he was baptized in June 2009,
14 a date after he had stopped attending church in China. The IJ
15 was not compelled to accept Sun's explanation that he misspoke
16 and meant 2008: the misstatement could give rise to either the
17 inference Sun advanced (that he simply stated the wrong year),
18 or to an inference that Sun memorized the relevant date but
19 forgot the year. *See Majidi v. Gonzales*, 430 F.3d 77, 80 (2d
20 Cir. 2005) (holding that the agency need not credit an
21 applicant's explanation for inconsistencies unless the
22 explanations would compel a reasonable fact-finder to do so);
23 *Siewe v. Gonzales*, 480 F.3d 160, 167 (2d Cir. 2007) ("Decisions

1 as to which of competing inferences to draw are entirely within
2 the province of the trier of fact" (quotation marks, alteration,
3 and citation omitted)).

4 Sun also testified that police started looking for him
5 around April 2009, and from that point until his December 2012
6 merits hearing they came to his family's house once every two
7 or three months. However, in a 2012 letter, his father wrote
8 that police only started looking for him "this year." The IJ
9 was not required to credit Sun's explanation that his father
10 may not have written clearly, as the IJ's interpretation that
11 Sun's father meant 2012 was at least as plausible as Sun's
12 reading of the letter as referring to 2009; further, neither
13 Sun's asylum application nor his mother mentioned anybody
14 looking for him in China. *Majidi*, 430 F.3d at 80; *Siewe*, 480
15 F.3d at 167.

16 The IJ also noted Sun's lack of corroborating evidence. An
17 applicant's failure to corroborate testimony may bear on
18 credibility, either because the absence of particular evidence
19 is viewed as suspicious, or because the absence of corroboration
20 in general makes an applicant unable to rehabilitate testimony
21 already called into question. See *Biao Yang v. Gonzales*, 496
22 F.3d 268, 273 (2d Cir. 2007). The IJ found that the form letter
23 from Sun's church in New York lacked specifics, and that Sun

1 had not convincingly explained why nobody from his church
2 testified or signed an affidavit on his behalf. See *Chuilu Liu*
3 *v. Holder*, 575 F.3d 193, 198 (2d Cir. 2009) (“[T]he alien bears
4 the ultimate burden of introducing such evidence without
5 prompting from the IJ.”). Sun also failed to corroborate his
6 testimony that he was baptized in China: a letter from his friend
7 in China mentioning the baptism was not admitted into evidence
8 because it was not timely submitted to the IJ. Neither the IJ’s
9 refusal to admit the document, nor his alternative finding that
10 if admitted the letter was entitled to little weight constituted
11 an abuse of discretion because Sun was unable to justify the
12 late submission, and the document was unsworn and bore no
13 indicia of reliability. See *Dedji v. Mukasey*, 525 F.3d 187,
14 191 (2d Cir. 2008) (the decision not to admit untimely-filed
15 documents is reviewed for abuse of discretion); *Xiao Ji Chen*
16 *v. U.S. Dep’t of Justice*, 471 F.3d 315, 342 (2d Cir. 2006) (the
17 weight accorded to evidence lies largely within the agency’s
18 discretion).

19 Given the inconsistencies and lack of corroboration,
20 substantial evidence supports the agency’s adverse credibility
21 determination, which is dispositive of asylum, withholding of
22 removal, and CAT relief. *Xiu Xia Lin*, 534 F.3d at 167; *Paul*
23 *v. Gonzales*, 444 F.3d 148, 155-57 (2d Cir. 2006). Because the

1 credibility determination is dispositive, we do not reach the
2 agency's alternative findings. See *INS v. Bagamasbad*, 429 U.S.
3 24, 25 (1976) ("As a general rule courts and agencies are not
4 required to make findings on issues the decision of which is
5 unnecessary to the results they reach.").

6 For the foregoing reasons, the petition for review is
7 DENIED. As we have completed our review, any stay of removal
8 that the Court previously granted in this petition is VACATED,
9 and any pending motion for a stay of removal in this petition
10 is DISMISSED as moot. Any pending request for oral argument
11 in this petition is DENIED in accordance with Federal Rule of
12 Appellate Procedure 34(a)(2), and Second Circuit Local Rule
13 34.1(b).

14 FOR THE COURT:
15 Catherine O'Hagan Wolfe, Clerk